

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Remanded by Supreme Court August 20, 2007

STATE OF TENNESSEE v. KENNETH C. DAILEY, III

Appeal from the Criminal Court for Davidson County
No. 2004-B-1779 Steve Dozier, Judge

No. M2007-01874-CCA-RM-CD - Filed November 20, 2007.

The defendant, Kenneth C. Dailey, III, pled guilty to second degree murder and reserved a certified question of law regarding the admissibility of his statements of confession to the crime. In our initial review, this court concluded that the certified question was not dispositive of the case. Our supreme court held that the certified question was dispositive of the case and reversed and remanded to our court for review of the certified question on its merits. After careful review, we conclude that the evidence does not preponderate against the trial court's finding that the defendant was not in custody at the time he made his incriminating statement. We affirm the judgment from the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which DAVID H. WELLES and THOMAS T. WOODALL, JJ., joined.

J. Carlton Drumwright, Brentwood, Tennessee, for the appellant, Kenneth C. Dailey, III.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Preston Shipp, Assistant Attorney General; Victor S. (Torry) Johnson, III, District Attorney General; and Pamela Sue Anderson, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Our supreme court summarized the facts and procedural history in its opinion as follows:

Metro Nashville police officer Mike Roland testified that, in April 2004, a woman's severely decomposed body was found in an abandoned vehicle at Tommy's Wrecker Service in Davidson County. A piece of rope was wrapped around the woman's neck. The body was transported to the Medical Examiner's Office for examination and was identified to be that of Nancy Marie Lyons.

In an attempt to discover information about the victim, Officer Roland interviewed several of the wrecker service's employees. In conjunction with the

investigation, all of the employees were asked to submit “elimination [finger]prints.”

The Defendant, Kenneth C. Dailey, III, was one of the employees interviewed and fingerprinted by the police. Although they had no forensic or other evidence linking the Defendant to the body, the police, based upon “gut feelings and instincts,” subsequently decided that they wished to interview him further. Officer Roland asked the son of the owner of Tommy’s Wrecker Service to tell the Defendant that the police needed to retake his fingerprints.

Officer Roland admitted that the real reason for requesting the Defendant to come down to the police station was to interview him and that a second fingerprinting was unnecessary. Officer Roland also testified that, at the time the Defendant reported for his second meeting with the police, they did not have probable cause to arrest him. Indeed, Officer Roland stated that he “had no evidence to arrest [the Defendant] on” and that he “had nothing on him.” The decision to ask for new prints was made because the officer “didn’t wanna scare him.”

At the appointed time, the Defendant drove to the station and parked across the street. When the Defendant entered the police station, Officer Roland met him in the front lobby and escorted him back to an interview room in the Criminal Investigations Division area, which is in the controlled-access portion of the facility. Officer Roland asked the Defendant to take a seat and then left to retrieve his paperwork. Officer Roland testified that the Defendant was not in custody at this time and was not handcuffed; while he was gone, Officer Roland left the interview room door open and unguarded. When Officer Roland returned to the interview room, he was accompanied by Sergeant Pat Postiglione.

Officer Roland and Sgt. Postiglione proceeded to interview the Defendant. Eventually, the Defendant confessed to having killed the victim after having had consensual sex with her. At that point, Officer Roland advised the Defendant for the first time of his constitutional rights pursuant to Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). After being advised of his rights, the Defendant signed a waiver of rights form and gave a second statement in which he again confessed to the killing.

The Defendant was charged with first degree premeditated murder. He filed a motion to suppress his statements on the basis that he had been subjected to a custodial interrogation without the requisite Miranda warnings. After a hearing, the trial court denied the Defendant’s motion. The Defendant subsequently entered a guilty plea to second degree murder but reserved for appeal a certified question of law regarding the admissibility of his statements. During the plea hearing, the trial court asked the prosecutor if it was “the State’s position that, absent these statements from [the Defendant] to the police, that the State could not proceed?” The prosecutor

responded, “Yes, Your Honor, it is dispositive. Our proof is timed [sic] with the - his statement. That - we would, however, not limit ourselves, should further evidence be developed at a later time. But, as the evidence stands at this time, Your Honor, it would be dispositive and we would not be able to proceed.”

The trial court, the prosecutor, and the Defendant agreed that, in conjunction with the Defendant’s guilty plea, the Defendant was reserving a certified question of law that was dispositive of the case. To that end, the judgment of conviction contains the following “special condition”:

Defendant’s plea of guilty is pursuant to Rule 37 such that he has expressly reserved a certified question for appeal as set out in the attached Agreed Order. The Agreed Order is expressly made part of the Judgment in this case and is to be entered simultaneously with that Judgment. The parties agree and the Court affirms that the certified question set out in the agreed order is expressly reserved as part of the plea agreement and all parties consent to this reservation. Further, all parties agree that this question is dispositive of the case.

The referenced Agreed Order sets forth the following as the certified question of law:

Whether the Defendant was subjected to a custodial interrogation by Metro Police Detectives on or about May 4, 2004 such that his subsequent statements were taken in violation of his rights pursuant to Article 1, Section Nine of the Tennessee Constitution, the Fifth Amendment of the United States Constitution and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Defendant gave two statements to detectives on May 4, 2004. No Miranda warnings were given by the detectives prior to the first statement given by Defendant. It is the Defendant’s position that this was a custodial interrogation thereby requiring Miranda warnings. Immediately following Defendant’s first statement, Miranda warnings were given by the detectives and the Defendant gave a second statement. It is the Defendant’s position that this second statement was obtained by the detectives using interrogation techniques expressly rejected by the United States Supreme Court in Missouri v. Seibert, 542 U.S. 600, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004). Testimony was given by Detective Mike Roland that the State’s proof of Defendant’s guilt consists entirely of the statements he gave on May 4, 2004 thereby making this question dispositive of the case.

The parties agree and the Court affirms that the certified question set out above is expressly reserved as part of the plea

agreement and that all parties consent to this reservation. Further, all parties agree that this question is dispositive of the case.

State v. Dailey, ___ S.W.3d ___, No. M2005-01223-SC-R11-CD, 2007 Tenn. LEXIS 661, at **2-7 (Tenn. Aug. 20, 2007).

Our supreme court held that the certified question of law was dispositive of the case and reversed and remanded to this court for review on the merits. The issue presented for review is whether the defendant was in custody at the time he made his statement to police such that his statement should be suppressed because he was not given his Miranda warnings.

The defendant argues that he was in custody but had not been advised of his Miranda warnings at the time he first implicated himself in the indicted offense. Specifically, he contends that the trial court erred by refusing to suppress his statement. The State argues that the defendant was not in custody at the time he gave the incriminating statement and, therefore, is not entitled to relief on appeal.

The findings of fact made by the trial court at the hearing on a motion to suppress are binding upon this court unless the evidence contained in the record preponderates against them. State v. Ross, 49 S.W.3d 833, 839 (Tenn. 2001). The trial court, as the trier of fact, is able to assess the credibility of the witnesses, determine the weight and value to be afforded the evidence, and resolve any conflicts in the evidence. State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). The prevailing party is entitled to the strongest legitimate view of the evidence and all reasonable inferences drawn from that evidence. State v. Hicks, 55 S.W.3d 515, 521 (Tenn. 2001). However, this court is not bound by the trial court's conclusions of law. State v. Randolph, 74 S.W.3d 330, 333 (Tenn. 2002). The application of the law to the facts found by the trial court are questions of law that this court reviews de novo. State v. Daniel, 12 S.W.3d 420, 423 (Tenn. 2000). The defendant has the burden of establishing that the evidence contained in the record preponderates against the findings of fact made by the trial court. Braziel v. State, 529 S.W.2d 501, 506 (Tenn. Crim. App. 1975).

Statements made during the course of a custodial police interrogation are inadmissible at trial unless the State established that the defendant was advised of his right to remain silent and his right to counsel and that the defendant then waived those rights. See Miranda v. Arizona, 384 U.S. 436, 471-75, 86 S. Ct. 1602 (1966). In Miranda, the United States Supreme Court limited its holding to a "custodial interrogation." Id. at 478-79. "Custodial interrogation" was defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Id. at 444. A person is "in custody" within the meaning of Miranda if there has been "a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." California v. Behler, 463 U.S. 1121, 1125, 103 S. Ct. 3517 (1983). The holding in Miranda has not been extended to non-custodial interrogations. Id. at 1124-25.

In State v. Anderson, 937 S.W.2d 851, 855 (Tenn. 1996), our supreme court found the following factors to be relevant in the determination of whether a suspect has been subjected to a custodial interrogation:

the time and location of the interrogation; the duration and character of the questioning; the officer's tone of voice and general demeanor; the suspect's method of transportation to the place of questioning; the number of police officers present; any limitation on movement or other form of restraint imposed on the suspect during the interrogation; any interactions between the officer and the suspect, including the words spoken by the officer to the suspect, and the suspect's verbal or nonverbal responses; the extent to which the suspect is confronted with the law enforcement officer's suspicions of guilt or evidence of guilt; and finally, the extent to which the suspect is made aware that he or she is free to refrain from answering questions or to end the interview at will.

The State contends that the evidence does not preponderate against the trial court's finding that the defendant was not in custody at the time he gave his statement, and we agree. In ruling that the defendant was not in custody, the trial court noted that the defendant came to the police station voluntarily and agreed to speak with the detective. The defendant was not handcuffed, and when the detective left the interview room to retrieve paperwork, the door remained open and the defendant was left unsupervised. The trial court stated that the detective was courteous and polite to the defendant even though the detective was deceptive in confronting the defendant with evidence of his guilt. The court found that the defendant never asked to leave or to consult an attorney, giving credibility to the notion that he did not feel he was in custody or was not free to leave. Based on the foregoing, the trial court found that the defendant was not in custody during the initial portion of the interview and, therefore, did not need to be advised of his Miranda rights.

The State includes the following analysis of the Anderson factors in its brief, which we include as part of our analysis:

The interview occurred at the police station at approximately 7:26 p.m. The interview lasted approximately twenty-one minutes from the time that the interview began until the detective advised the Defendant of his Miranda rights. Furthermore, during the beginning of the interview, the parties were not even discussing the facts of the case, but the Defendant's practice of homeschooling. The Defendant voluntarily drove himself to the police station, although Detective Roland had requested the Defendant to come to the station in order to resubmit fingerprints. When the Defendant arrived at the police station, Detective Roland asked him if it was okay for them to talk for a few minutes. The Defendant agreed to talk to the detective. In fact, at the beginning of the interview, the Defendant told Detective Roland that it was good that they were talking again because he had forgotten to tell the officers something and had been intending to contact the police to give more details. Throughout the interview, the questioning was conversational, polite, and courteous. Neither of the two detectives ever raised their voices, became upset or excited, or left their seats. The Defendant was not restrained in any way at any point

during the interview. The Defendant never asked or attempted to leave the interview room. Although the interview took place in a controlled area of the police station, the door of the interview room was not locked, and no access card was required to leave the building. The Defendant never asked or attempted to call anyone, such as a family member.

(citations omitted). Near the end of the interview, after the detective told the defendant he was going to “make it official” by reading him his rights, the defendant asked whether he would have to spend the night at the police station, indicating that until that point he believed he was free to leave.

Based on our review of the record, the evidence does not preponderate against the conclusion of the trial court that the defendant was not in custody at the time of his interview. Miranda warnings were not necessary because the defendant was not in custody prior to making the incriminating statement. Therefore, we conclude that the defendant’s statement was admissible, and we affirm the judgment from the trial court.

Conclusion

Based on the foregoing and the record as a whole, we affirm the judgment from the trial court.

JOHN EVERETT WILLIAMS, JUDGE